

Namibia

Administration of Justice Proclamation, 1919

Proclamation 21 of 1919

Legislation as at 7 September 1995

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Republic of Namibia
Annotated Statutes

Administration of Justice Proclamation, 1919

Proclamation 21 of 1919

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Commenced on 1 January 1920

**[This is the version of this document from 7 September 1995
and includes any amendments published up to 26 April 2024.]**

**[Amended by Administration of Justice Amendment Proclamation
1920 (Proclamation 45 of 1920) on 18 November 1920]**

**[Amended by Better Administration of Justice Proclamation,
1921 (Proclamation 52 of 1921) on 29 December 1921]**

[Amended by Police Proclamation, 1921 (Proclamation 56 of 1921) on 1 January 1922]

**[Amended by Administration of Justice Proclamation Amendment
Proclamation, 1930 (Proclamation 16 of 1930) on 1 February 1930]**

**[Amended by Administration of Justice Amendment
Proclamation, 1933 (Proclamation 4 of 1933) on 1 February 1933]**

[Amended by Magistrates' Courts Proclamation, 1935 (Proclamation 31 of 1935) on 31 December 1935]

**[Amended by Attorneys, Notaries and Conveyancers Admission
Proclamation, 1936 (Proclamation 4 of 1936) on 15 February 1936]**

[Amended by Deeds Registry Proclamation, 1939 (Proclamation 37 of 1939) on 1 October 1939]

**[Amended by Administration of Justice Proclamation Amendment
Ordinance, 1955 (Ordinance 6 of 1955) on 28 April 1955]**

[Amended by Supreme Court Act, 1959 (Act 59 of 1959) on 1 January 1960]

[Amended by Prisons and Reformatories Repeal Ordinance, 1960 (Ordinance 31 of 1960) on 30 May 1960]

[Amended by Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963) on 1 July 1965]

[Amended by Admission of Advocates Act, 1964 (Act 74 of 1964) on 18 February 1966]

**[Amended by Administration of Justice Amendment
Ordinance, 1966 (Ordinance 13 of 1966) on 17 May 1966]**

[Amended by Civil Proceedings Evidence Act, 1965 (Act 25 of 1965) on 30 June 1967]

[Amended by Legal Practitioners Act, 1995 (Act 15 of 1995) on 7 September 1995]

**[The Rules of Court Proclamation 1 of 1920 (OG 27), which came into force on its date
of publication (23 January 1920), elaborated on section 9(2) of the Proclamation with
respect to the framing of Rules of Court, without actually amending the Proclamation.
Section 9 has since been repealed, so Proc. 1 of 1920 is no longer of any relevance.]**

PROCLAMATION

BY HIS HONOUR SIR EDMOND HOWARD LACAM GORGES, KNIGHT COMMANDER OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE, A MEMBER OF THE ROYAL VICTORIAN ORDER, ADMINISTRATOR OF THE PROTECTORATE OF SOUTH WEST AFRICA IN MILITARY OCCUPATION OF THE UNION FORCES

[This Proclamation has no long title. The date of signature appears at the bottom of the Proclamation.]

WHEREAS it is desirable to introduce Roman Dutch Law into this Protectorate, to amend the Law constituting provisional Courts for the administration of justice in criminal cases therein, to establish Courts of Civil and Criminal jurisdiction, to establish a police force and to constitute certain public offices which have become necessary,

NOW THEREFORE under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:-

1.

- (1) The Roman Dutch Law as existing and applied in the Province of the Cape of Good Hope at the date of the coming into effect of this Proclamation shall, from and after the said date, be the Common Law of the Protectorate, and all Laws within the Protectorate in conflict therewith shall, to the extent of such conflict and subject to the provisions of this Section, be repealed.
- (2) Notwithstanding the provisions of paragraph (1) of this section, all Proclamations which have been issued during the Military occupation of the Protectorate and are still in force on the said date shall continue to be in force.
- (3) All rights, privileges, obligations or liabilities acquired, accrued or incurred prior to the said date shall be determined according to the law in force in the Protectorate at the time of acquisition, accrual or incurrence.

2.

All offences committed prior to the date of the coming into effect of this Proclamation shall be tried and determined by the Court having jurisdiction under this Proclamation according to the criminal law in force in the Protectorate before the said date, and any criminal case pending in any Court established prior to the said date may be continued and determined in the Court having jurisdiction under this Proclamation as if this Proclamation had not been issued. Provided that where the person constituting such Court shall not be the same person as constituted the Court before which the offence was originally brought the proceedings shall be commenced de novo.

3.

- (1) [subsection (1) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (2) [subsection (2) amended by Proc. 16 of 1930 and by Proc. 4 of 1933, substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (3) [subsection (3) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (4) [subsection (4) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (5) [subsection (5) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (6) The law of procedure in civil proceedings before the High Court shall be that for the time being followed by the Cape Provincial Division of the Supreme Court of South Africa.
[subsection (6) substituted by Ord. 6 of 1955 and amended by Act 25 of 1965]
- (7) [subsection (7) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]
- (8) [subsection (8) substituted by Ord. 6 of 1955 and deleted by Act 59 of 1959]

- (9) The Registrar shall receive on behalf of the Administration such fees as shall be prescribed by the Administrator by notice in the Official Gazette.

[subsection (9) inserted by substituted by Ord. 6 of 1955 and amended by Act 59 of 1959]

- (10) It shall be competent for one or two judges of the High Court of South West Africa to hear any civil cause, proceeding or matter and any criminal appeal or criminal review.

[subsection (10) inserted by Ord. 6 of 1955]

- (11) Whenever any matter as is mentioned in subsection (10) is heard before two judges, the judge president, or in his absence, the next senior judge shall preside.

[subsection (11) inserted by Ord. 6 of 1955]

[Section 5 of the Rehoboth Affairs Proclamation 1 of 1937 (OG 696) includes the following provision:]

["Notwithstanding anything contained in the agreement contained in the Schedule to the Proclamation of the Administrator dated the twenty-eighth day of September, 1923 (Proclamation No. 28 of 1923), it is hereby provided that the High Court of South West Africa shall have jurisdiction in terms of section three of the Administration of Justice Proclamation, 1919 (Proclamation No. 21 of 1919), in all civil suits and proceedings between a European and a member of the Rehoboth Baster Community, or between a European and a native, where the defendant is resident in the territory referred to as the Gebiet in the aforesaid Agreement, as amended by section fourteen of the Rehoboth Gebiet Affairs Proclamation, 1928 (Proclamation No. 9 of 1928);]

[Provided that all such suits and proceedings shall be determined mutatis mutandis in accordance with the provisions of sub-paragraph (1) of paragraph eight of the aforesaid Agreement."]

4. ***

[section 4 deleted by Act 59 of 1959]

5. ***

[section 5 deleted by Act 59 of 1959]

6.

- (1) A Master of the High Court shall be appointed by the Administrator.

- (2) [subsection (2) deleted by Proc. 52 of 1921]

[Act 59 of 1959 deletes section 6, with the exception of subsection (1), but subsection (1) appears to be all that was remaining of section 6 at that time.]

7.

From and after the date of the appointment of a Master of the High Court, the Office of Public Trustee created by Proclamation of the Military Governor of the South-West Africa Protectorate No. 20 of the 25th of October, 1915, shall be abolished, and all and several the powers and functions of the Public Trustee shall devolve upon the Master of the High Court of the territory, and all monies and other assets held by the said Public Trustee at the date aforesaid shall become vested in, and all liabilities of the said Public Trustee shall devolve upon, the said Master.

[The word "of" appears to be missing in the phrase "all and several [of] the powers and functions".]

8. ***

[section 8 amended by Proc. 52 of 1921 and deleted by Ord. 34 of 1963]

9. ***

[section 9 amended by Proc. 45 of 1920 and by Proc. 52 of 1921, and deleted by Proc. 31 of 1935]

10.

- (1) Notwithstanding any of the provisions of this Proclamation, the Courts of Magistrates shall continue to exercise the functions and have all the jurisdiction and powers of the Military Magistrates' Courts established under Sections 1, 2 and 3 of Proclamation 11 of 1915 in regard to offences against any Martial Law Regulations or notices and may in respect of such offences impose the penalties provided by Section 3 of the said Proclamation.
- (2) There shall be no appeal to, or review by, the High Court of South-West Africa against any judgment or sentence of a Magistrate in terms of this Section, but all such judgments and sentences shall be reviewed by the Administrator who shall continue to exercise in regard thereto the power hitherto exercised by him.
- (3) Whenever by reason of its nature or magnitude an offence against any Martial Law Regulation or notice is unsuitable for trial by a Magistrate's Court, such offence shall be dealt with in accordance with the provisions of Section 5, 6, 7 and 8 of Proclamation 11 of 1915 by a Special Criminal Court, and all and several the said provisions shall apply in the case of such offence.
- (4) In respect of the prosecution and trial of offences against Martial Law Regulations and notices, the Crown Prosecutor shall have and exercise all such powers as are held or exercises by him under Section 8 of this Proclamation in regard to crimes and offences.

11. ***

[section 11 amended by Proc. 4 of 1936, deleted in part by Act 74 of 1964 and in part by Ord. 13 of 1966, then deleted by Act 15 of 1995 "in so far as the provisions thereof are still in force"]

12.

- (1) There shall be established as from the first day of January, 1920, a police force for the territory entitled the South-West Africa Police.

[subsection (1) amended by Proc. 56 of 1921]

- (2) [subsection (2) deleted by Proc. 56 of 1921]

13. ***

[section 13 repealed by Proc. 37 of 1939]

14.

As soon as may be after any proclamation shall have been promulgated by the Administrator, the Secretary for the Protectorate shall cause two fair copies of such proclamation, one being in English and the other in the Dutch language (one of which copies shall be signed by the Administrator), to be enrolled of record in the office of the Registrar of the High Court; and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Administrator shall prevail.

15. ***

[section 15 deleted by Ord. 31 of 1960]

16.

This Proclamation may be cited for all purposes as the “Administration of Justice Proclamation, 1919”, and shall come into force and effect on the first day of January, 1920, save as regards the date of the appointment of the Judge of the High Court which shall take effect as from the fourteenth day of October, 1919.

GOD SAVE THE KING

Given under my hand at Windhuk this 12th day of December, 1919.

E.H.L. GORGES

Administrator